161U.S.346

EXTRACTS FROM TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 611.

ROBERT M. DOUGLAS, PLAINTIFF IN ERROR,

vs.

ISAAC WALLACE, DAVID WALLACE, JACOB WALLACE, AND WILLIAM WALLACE, PARTNERS UNDER THE FIRM AND STYLE OF WALLACE BROTHERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

RECORD FILED MAY 10, 1895.

(15,898.)





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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1895.

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UNITED STATES OF AMERICA, *ss:*

To Isaac Wallace, David Wallace, Jacob Wallace, and William Wallace, partners under the firm and style of Wallace Brothers, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of North Carolina, wherein Robert M. Douglas is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William T. Faircloth, chief justice of the supreme court of North Carolina, this seventeenth day of April, in the year of our Lord one thousand eight hundred and ninety-five.

W. T. FAIRCLOTH,
Chief Justice of the Supreme Court of North Carolina.

On this 22 day of April, in the year of our Lord one thousand eight hundred and ninety-five, personally appeared M. A. White, sheriff, before me, the subscriber, Henry C. Cowles, clerk of the U. S. circuit & district courts for the western district of North Carolina, and makes oath that he delivered a true copy of the within citation to William Wallace, one of the within-named defendants and a member of the firm of Wallace Bros.

M. A. WHITE,
Sheriff of Iredell County, N. C.

Fees, 60c., paid by R. M. Douglas.

Sworn to and subscribed the 22 day of April, A. D. 1895.

[Seal of U. S. Circuit Ct., West. Dist. of N. C.]
[Seal of U. S. District Ct., West. Dist. of N. C.]

H. C. COWLES,
Clerk U. S. Circuit & District Courts, West. Dist. of N. C.

Endorsed: Wallace Bros. *vs.* R. M. Douglas. Citation to Supreme Ct. U. S.

(Record, page 3.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of North Carolina, before you or some of you, being the

highest court of law or equity of the said State in which a decision could be had in the said suit between Isaac Wallace, David Wallace, Jacob Wallace, and William Wallace, partners under the firm and style of Wallace Brothers, plaintiffs, against Robert M. Douglas, defendant, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Robert M. Douglas, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventeenth day of April, in the year of our Lord one thousand eight hundred and ninety-five.

(Signed) N. J. RIDDICK,
Clerk of the Circuit Court of the United States for the Eastern District of North Carolina.

Allowed by—
(Signed) W. T. FAIRCLOTH,
Chief Justice of the Supreme Court of North Carolina.

(Record, page 5.)

STATE OF NORTH CAROLINA:

In the Supreme Court.

ISAAC WALLACE, DAVID WALLACE, JACOB WALLACE, and WILLIAM WALLACE, Partners under the Firm and Style of Wallace Brothers, Plaintiffs,

vs.

ROBERT M. DOUGLAS, Defendant.

The defendant, Robert M. Douglas, on his writ of error in the above case, makes assignment of errors as follows:

1st. That the court erred in affirming the judgment of the superior court of Iredell county, refusing the motion of the defendant "that the action be dismissed for that the complaint and evidence in the case disclose that all the drafts and accounts herein declared on were drawn on claims or an interest in claims against the United

States before their allowance, and which are therefore null and void under the statutes of the United States."

2nd. That the court erred in affirming the judgment of said superior court of Iredell county, adjudging that the plaintiffs, Wallace Bros., recover of the defendant the sum of $961.50, inasmuch as the alleged causes of action, as set out in the complaint, were unlawful, for that the drafts and accounts declared on are based upon and assign an interest in claims against the United States before the allowances of said claims, in violation of section 3477 of the Revised Statutes of the United States.

3rd. That the court erred in affirming the judgment of the superior court of Iredell county, adjudging the defendant Douglas liable to the plaintiffs for sums of money alleged to have been placed to his credit and control in the Treasury Department, when the public statutes of the U. S., of which the courts of North Carolina take judicial cognizance, do not permit any funds to be so placed in the Treasury Department to the credit and control of a claimant so as to be by him withdrawn, but forbid any funds to be withdrawn from the Treasury except upon the warrant of the Secretary; and, further, for that there was no allegation in the complaint or finding by the referee or the court that there was any appropriation available for the payment of such claims at the times they are alleged to have been placed to the credit of the defendant or at any time thereafter.

(Signed) ROBERT M. DOUGLAS,
Defendant and Plaintiff in Error.

(Record, page 7.)

Know all men by these presents that we, Robert M. Douglas, as principal, and Samuel L. Trogden and John W. Scott, as sureties, are held and firmly bound unto Isaac Wallace, David Wallace, Jacob Wallace, and William Wallace, partners under the firm and style of Wallace Brothers, in the full and just sum of two hundred dollars, to be paid to the said Wallace Brothers, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a term of the supreme court of the State of North Carolina, in a suit depending in said court between the said Wallace Brothers, plaintiffs, and the said Robert M. Douglas, defendant, a judgment was rendered against the said Robert M. Douglas, and the said Robert M. Douglas having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Wallace Brothers, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the

said Robert M. Douglas shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ROB'T M. DOUGLAS. [SEAL.]
SAMUEL L. TROGDEN. [SEAL.]
JOHN W. SCOTT. [SEAL.]

Sealed and delivered in presence of—
R. G. VAUGHAN.

Approved by—
(Signed) W. T. FAIRCLOTH,
Chief Justice of Supreme Court of N. C.

(Endorsed:) North Carolina, Guilford county.

I, R. G. Vaughan, a notary public in and for said county, do hereby certify that Samuel L. Trogden and John W. Scott this day personally appeared before me and acknowledged the due execution of the within bond, and, being by me duly sworn, says each for himself that he is severally worth double the amount of the penalty of the within bond, over and above his debts and liabilities and property exempt from execution.

Witness my hand and official seal this 16th day of April, 1895.

(Signed) R. G. VAUGHAN,
Notary Public. [L. S.]

(Record, page 9.)

NORTH CAROLINA, }
Iredell County. }

Be it remembered that in the superior court of Iredell county, begun and held at the court-house, at Statesville, on the 11th Monday after the 1st Monday in March, 1894, before the Honorable John Gray Bynum, judge, the following proceedings were had: Be it further remembered that heretofore, to wit, on the 17th of July, 1885, Wallace Bros. sued out of the office of said court against R. M. Douglas a writ in the following words, with sheriff's endorsement thereon:

ISAAC WALLACE, DAVID WALLACE, JACOB WALLACE, and WILLIAM WALLACE, Trading under the Firm and Name of Wallace Bros.,

against

R. M. DOUGLAS.

Summons for Relief.

State of North Carolina to the sheriff of Guilford county, Greeting:

You are hereby commanded to summon R. M. Douglas, the defendant above named, if he be found *in* within your county, to be and appear before the judge of our superior court, at a court to be

held for the county of Iredell, at the court-house, in Statesville, at the next term of said superior court of Iredell county, in August, 1885, and answer the complaint, a copy of which will be deposited in the office of the clerk of the superior court for said county, within the first three days of said term, and let said defendant take notice that if he fail to answer to the said complaint within that time the plaintiffs will apply to the court for the relief demanded in the complaint. Hereof fail not and of this summons make due return.

Given under my hand and seal of said court this 17th day of July, 1885.

(Signed) J. B. CONNELLY,
Clerk of the Superior Court of Iredell County. [L. S.]

(Endorsed:) Wallace Brothers *vs.* R. M. Douglas. Summons for relief, returnable to — term of the superior court of —— county. Received July 18, 1885. Served July 18, 1885, by making known to R. M. Douglas the contents of this summons. (Signed) C. C. Wheeler, sheriff, by W. B. Young, D. S. Fee, 60c., paid.

We, the undersigned, hereby undertake to pay to R. M. Douglas, the defendant named within, all such costs and damages, not exceeding two hundred dollars, as he may sustain by reason of any failure to prosecute the within suit with effect.

This 17th July, 1885.

(Signed) M. H. LOWENSTEIN.

(Record, page 10.)

Complaint.

Plaintiffs, complaining of the defendant, say:

1. That on December 4, A. D. 1879, and for several years previous thereto, the defendant was marshal of the United States for the western district of North Carolina and had for a long time employed J. T. Patterson, Jr., as his deputy, and had agreed with him to give him two-thirds of all fees earned by him as such deputy, and at said time, to wit, on the first day of December, A. D. 1879, the defendant was indebted to said J. T. Patterson, Jr., in the sum of two hundred dollars ($200) for two-thirds of the fees so earned, and on the said day the said J. T. Patterson, Jr., drew an order on defendant for the said sum of two hundred dollars, which order was on the same day accepted by defendant, to be paid when defendant received funds to the use of said J. T. Patterson, Jr., and said defendant has long since received more than two hundred dollars to the use of J. T. Patterson, Jr., and for the two-thirds of the fees aforesaid, and plaintiffs are now the owners of said order and of said debt so formerly due to said J. T. Patterson, Jr.

2. That on the 16th day of November, A. D. 1881, the defendant was also indebted to W. J. Patterson, who had also been his deputy marshal, and for two-thirds of the fees earned by him under a con-

tract with defendant to pay him two-thirds thereof, in the sum of three hundred and twenty-five dollars ($325), and on said 16th of November, A. D. 1881, the said W. J. Patterson drew an order on defendant for the sum of three hundred and twenty-five dollars so due, and defendant accepted the same, to be paid when he received funds to the use of W. J. Patterson, and defendant has long since received more than three hundred and twenty-five dollars to the use of W. J. Patterson and for the two-thirds of fees so due him, and plaintiffs are now the owners of said order and debt so formerly due to W. J. Patterson.

3. That on the 1st day of July, A. D. 1882, the defendant was due to S. P. Graham in the sum of ninety-eight dollars and eighty-two cents ($98.82) for two-thirds of the fees earned by said S. P. Graham as deputy marshal under defendant and under a contract with him to give him two-thirds of all such fees, and defendant has long since received more than the said sum of ninety-eight dollars and eighty-two cents for the said two-thirds fees so due said Graham, and said debt of said Graham's against defendant now belongs to plaintiffs.

4. That since plaintiffs became the owners of all the said three debts they informed defendant that they were the owners of the same, and he acknowledged them as such owners and promised to pay the said three debts to plaintiffs as soon as he could collect said debts from the United States Government, and they have demanded the payment thereof of defendant since he collected the whole thereof from the United States Government, but he has refused and neglected and still refuses and neglects to pay the same and every part thereof.

Relief.

Plaintiffs therefore demand judgment against the defendant for $200 and $325 and $98.82, to wit, $623.82 in all, and interest thereon from the time that defendant collected the same, to wit, three years before the bringing of this action, for all such other relief as *he is* entitled to, and for cost of this action.

(Signed) ARMFIELD & TURNER,
Attorneys for Plaintiffs.

Endorsed: Filed 11 Aug., 1885. J. B. Connelly, C. S. C.

(Record, page 11.)

Iredell Superior Court, May Term, 1886.

By consent of parties, this case is referred to H. Bingham, Esq., to hear the testimony, take and state an account, and report to this court how much, if anything above one penny, is due the plaintiffs.

(Signed) JAS. C. MacRAE, *Judge.*

Judgment, February Term, 1886.

Upon motion of defendant's counsel, it is considered by the court that the absolute judgment granted and entered against the defendant at the last term of this court be set aside, and that the plaintiffs have judgment against the defendant by default for want of an answer, and for an enquiry as to the amount they are entitled to recover by reason of the matters stated in the complaint. Therefore let a jury come to say what amount plaintiffs are entitled to recover of the defendant, the defendant not to be concluded as to the question of his having received the money charged in the complaint.

(Signed) JAS. C. MACRAE, *Judge S. C.*

* * * * * * *

(Record, page 16.)

NORTH CAROLINA, }
Iredell County. }

Superior Court, February Term, 1888.

WALLACE BROS. }
vs. }
R. M. DOUGLAS. }

This action coming on at February term, 1888, before Connor, judge, upon the report of H. Bingham, Esq., referee, and exceptions thereto filed by defendant, and the matter being debated by counsel for plaintiffs and defendant, when, upon consideration, the court set aside the report and re-referred the matter to H. Bingham, Esq., under the order heretofore referring the matter to him, with the further directions—

1st. To find the amount of the claim S. P. Graham had against the United States Government, traded to plaintiffs.

2nd. What amount has been allowed the defendant thereon and paid to him or placed to his credit in the Treasury Department of the United States, if anything, and at what time the same was paid to him or placed to his credit and control.

3rd. Whether the defendant has received or had placed to his credit and control in the Treasury Department of the United States any money due him for services of W. J. Patterson as deputy marshal for services performed prior to the acceptance by defendant of the draft of said W. J. Patterson, not subject to previous drafts or money advanced by defendant; and, if so, how much and when.

4th. Whether the defendant has received or had any money paid to him or placed to his credit in Treasury Department of the United States on claims due him for services of J. T. Patterson, Jr., performed prior to the acceptance of the order of the said J. T. Patterson and not subject to previous orders or money advanced by defendant; and, if so, when and how much.

5th. That if plaintiffs show that money has been received by defendant or placed to his credit and control in the Treasury Department of the United States since the acceptance of said drafts, it shall be taken and held as being subject to the payment of these drafts, unless the defendant shall show that it is not.

6th. For the purpose of enabling the commissioner to find these facts, the case is reopened for further evidence on both sides, and that the commissioner will make his report under this order to the next term of this court, in which report he will pass upon and report whether he allows or overrules the exceptions to the evidence made by either plaintiffs or defendant.

And the judgment signed in this case at this term of the court is hereby set aside and vacated.

7th. That after the report is filed, upon ten days' notice, either party may move for confirmation of said report, either party having the right to file exceptions thereto. All exceptions of the defendant not as to the merits of the controversy are overruled.

H. G. CONNOR,
Judge Presiding.

* * * * * * *

(Record, page 26.)

Judgment at November Term, 1888.

This cause coming on to be heard at this term of the court upon the report of H. Bingham, Esq., referee, and the exceptions filed thereto by the defendant, and being heard by the court, upon motion of Armfield & Turner, attorneys for the plaintiffs, it is adjudged that the exceptions to said report filed by defendant be overruled and the report be in all respects confirmed. It is therefore ordered and adjudged that the plaintiffs, Wallace Bros., recover of the defendant, R. M. Douglas, on this action the sum of seven hundred and forty-three $\frac{70}{100}$ dollars, with interest on $620.62 from November 5th, 1888, until paid. It is further adjudged that the plaintiffs recover the cost of this action against said defendant, to be taxed by the clerk of this court, including $50 for H. Bingham, referee.

FRED. PHILIPS,
Judge Presiding.

(Record, page 27.)

Order of Re-reference, May Term, 1889.

This cause coming on to be heard before Brown, judge, upon the certificate of the supreme court, it is ordered that this cause be referred to H. Bingham, Esq., with specific instructions to pass upon the competency and the admissibility of certain transcript evidence of the Treasury Department of the United States offered in evidence by the plaintiffs and state whether he overrules or sustains the defendant's objections thereto, and to reform his report showing his rulings thereon.

G. H. BROWN, *Judge.*

* * * * * * *

(Record, page 31.)

Judgment, November Term, 1889.

This cause coming on for hearing at the November term, 1889, of this court upon the amended report of H. Bingham, Esq., referee, and the exceptions thereto and the same being heard, it is considered by the court—

That the defendant's first exception be sustained, that the alleged Treasury transcripts are not competent testimony in this cause:

1. Because they are certified pursuant to the provision of section 886 of the Revised Statutes of the United States; that said section does not apply to suits between individuals, but only to "suits brought in any case of delinquency of a revenue officer or the person accountable for public money."

2. Because the said transcripts do not by themselves tend to show that the defendant has received money to the use of the deputies drawing the drafts in controversy.

This testimony being excluded for the foregoing reasons, the plaintiffs insisting that there is other testimony tending to sustain the findings of the referee, it is considered that the said report be recommitted to said referee to the end that he may pass upon said testimony, and if, in his discretion, he deems it in furtherance of justice, permit the plaintiffs to introduce other competent testimony.

From this judgment the plaintiffs appeal to the Supreme Court. Bond fixed at $25.

H. G. CONNOR, *Judge.*

* * * * * * *

(Record, page 35.)

Order at February Term, 1893.

This cause coming on to be heard upon the exceptions of the plaintiffs to the report of the referee, the court doth consider and adjudge that this cause be re-referred to H. Bingham, Esq., with instructions to proceed as follows: He will admit and receive as evidence in the cause the transcript of the records of the Treasury Department, in Washington city, designated as "A B," "C," "A A." As to the sufficiency of said evidence the court does not now adjudicate, this ruling going to the extent only of its competency and proper authentication. The plaintiffs having abandoned their exception that the referee did not consider any evidence showing that the defendant received money to the respective payees in the orders sued on after their respective dates for services rendered after said date, the said referee will not consider any such evidence. Should he deem it to be in the interest of justice, he may hear other and further evidence on both sides or on either side, it being suggested that there is such evidence, and will make report of all such, together with his conclusions of law, to this court.

(Signed) ROB'T W. WINSTON, *J. S. C.*

The defendant excepts to so much of the order as adjudges proper the evidence "A A," B C, and "A A" as admissible.

(Signed) WINSTON, *J.*

(Record, page 36.)

Report of Referee.

This case having been referred to the undersigned at May term, 1886, of Iredell superior court by his honor Judge —— to take and state an account and report at the ensuing term his findings of fact and conclusions of law,

And after hearing the evidence adduced by the plaintiffs and the defendant, the referee made his report to the November term, 1887, finding all the issues of fact and conclusions of law in favor of the plaintiffs, and, no exceptions having been filed by the defendant at this nor the succeeding term, judgment was rendered for the plaintiffs, thereby confirming said report in all things. At the February term, 1888, upon motion of the defendant's counsel, the said judgment was set aside by Connor, judge, and the defendant was allowed to file exceptions to the report, which were heard at the same term, and a re-reference, with certain instructions, was ordered. All the exceptions of the defendant not to the merit of the controversy were overruled.

And in the pursuance of said re-reference the referee, in the presence of both the plaintiffs and the defendant, took other testimony, and, after having carefully considered it, again found all the issues in favor of the plaintiffs and reported the same to the August term, 1888, to which report the defendant filed exceptions, and at the following November term the same were heard before his honor Phillips, judge, and after hearing argument of counsel gave judgment for the plaintiffs and at the same time confirming the report of the referee. From this judgment the defendant appealed to the Supreme Court, and the Supreme Court overruled all the defendant's exceptions save and except the one as to the competency of certain transcript evidence from the Treasury Department, at Washington, D. C. The court sustained this exception upon the ground that the referee had failed to decide upon its competency after having been directed by Connor, judge, to do so. The language of the Supreme Court in sustaining this exception is as follows:

"The first exception must be sustained and the court without a re-reference will decide upon the questions of law raised by the defendant's objection to the evidence referred to in it, and give judgment upon the report of the referee, if this may properly be done, or for sufficient cause it may set aside the report and direct the account to be retaken and proceed in the action according to law." This cause coming on at the May term, 1889, and being heard by Brown, judge, he directed a re-reference with instructions for the referee to pass upon the competency of certain record evidence from the Treasury Department, at Washington, D. C.; and in pursuance of the order of his honor Brown, judge, in his order

of reference the parties again met at the law office of Bingham & Caldwell on the 16th day of July, 1889, and after hearing argument of counsel upon the competency of the aforesaid transcripts the referee decided that they were competent evidence in the case, and therefore reaffirmed in all things his report made to the August term, 1888. To this report defendant filed exceptions and they were heard by his honor Connor, judge, at the November term, 1889, of said superior court, and after hearing argument of counsel upon the competency of said transcript evidence and after due consideration of the same decided that said transcript records were incompetent. The court then re-referred the cause to the undersigned with directions to pass upon other evidence introduced by the plaintiffs and to allow them to introduce their evidence, if in the discretion of referee he should deem it in furtherance of justice. The parties, by agreement of counsel, again met at the law office of Bingham & Caldwell, in the city of Statesville, on the 4th day of January, 1893. The plaintiffs offered additional record evidence from the Treasury Department, at Washington, D. C., marked Exhibit- "A," " B," "C," which was objected to by defendant. Plaintiffs offered other record evidence from the said Treasury Department, marked Exhibit "A A," to which the defendant again objected.

At the request of the referee the cause was adjourned to the law office of Judge Furches for argument upon the *the* competency of the said records offered by the plaintiffs, and the same was heard on the 5th day of January, 1893, and after a full and able argument by counsel both for the plaintiffs and the defendant the referee was of opinion that the said records under the ruling of his honor Connor, judge, were incompetent, and therefore sustained the defendant's exceptions thereto; and again, upon motion of the counsel for the plaintiffs, the 24th day of January, 1893, was agreed upon by the parties to argue the effect of other evidence introduced by them, their counsel contending that they had proved their case by competent evidence aside from the record evidence. The parties again met on the said 24th day of January, and after hearing the counsel on both sides the referee found as a fact that the evidence other than the said transcripts was not sufficient to establish the plaintiffs' cause of action, and therefor- found the issues of fact in favor of the defendant and directed judgment to be rendered for the plaintiffs, one penny damages, and also for cost, amounting to one penny.

The referee made his report to the February term, 1893, of said court.

The plaintiffs at the said February term filed exceptions to the report and the same was heard by his honor Winston, judge, at same term, and he decided that the said transcripts were competent evidence and re-referred the cause again to the undersigned with directions to admit and receive as evidence the transcript of the records of the Treasury Department, in Washington city, designated as "A," " B," " C," "A A." His honor also directed the referee, if he should deem it in the interest of justice, to hear other evidence from both sides.

In pursuance of the ruling of his honor Winston, judge, the

plaintiffs and the defendants, together with their counsel, met at the law office of Bingham & Caldwell, on the — day of July, 1893, and proceeded to hear and take other evidence in the cause.

Defendant offers a letter from Charles Foster, Secretary of the Treasury Department, certified by the Court of Claims (see letter marked Exhibit "M"); to the introduction of which the plaintiffs object upon the ground of its incompetency; objection sustained by referee; also another copy of same, marked Exhibit "N" and certified by Secretary Foster. Plaintiffs object to the introduction of this copy and the same is excluded upon the ground of its incompetency. Defendant then offers copy of account of S. P. Graham taken from records of the Treasury Department, certified by W. S. Rosecrans, Register of the Treasury, and Charles Foster, Secretary of the Treasury Department, marked Exhibit "O." Plaintiffs object to the introduction of this evidence. Objection overruled. Defendant offers deposition of Arthur Hendrix taken by plaintiffs, but not introduced by them; also deposition of Mary H. Brady, not offered by the plaintiffs. Plaintiffs objected to the introduction of these depositions. Objection overruled upon the ground that plaintiffs vouched for their legality by taking them and filing the same in this cause. Paper containing these depositions is marked Exhibit "P." Plaintiffs offer the deposition of Joseph B. Fowler, which is included in Exhibit "P." Defendant objects to the introduction of this deposition upon the ground that Fowler is not mentioned in the notice nor in the commission. The referee is of opinion that this objection is well taken, and therefore sustains it.

After considering all the evidence in the cause, except such evidence as has been ruled out as incompetent, I therefore find the following facts, to wit:

1st. That the defendant, R. M. Douglas, was marshal of the western district of North Carolina for the years 1878, 1879, 1880, and 1881, and that during said years he had in his employment as deputy marshals J. T. Patterson, Jr., W. J. Patterson, and S. P. Graham.

2nd. That on the 4th day of December, 1879, J. T. Patterson, Jr., drew a draft on defendant in favor of himself for $200.00 (two hundred dollars) and endorsed by him on same day to Blantuo & Dryant and subsequently purchased by the plaintiffs, who are now the owners thereof, and that on the — day of ——, 188–, the plaintiffs presented said draft to the defendant for payment, who accepted the same conditionally by writing across the face thereof the following:

"Accepted, payable when I receive funds to the use of J. T. Patterson, Jr.

R. M. DOUGLAS,
U. S. Marshal."

3rd. That on the 16th day of November, 1881, W. J. Patterson drew a draft on defendant for $325.00 (three hundred and twenty-five dollars), payable to himself, and on said day endorsed by him

and accepted by the defendant conditionally by writing across the face thereof the following:

"Accepted, payable when I receive funds to the use of W. J. Patterson.

(Signed) R. M. DOUGLAS,
U. S. Marshal."

And that the plaintiffs are now the owners thereof.

4th. That neither of the foregoing drafts have been paid nor any part thereof.

5th. That the defendant Douglas has had placed to his credit in the Treasury Department of the United States the sum of $460.76 on claims due him for services of J. T. Patterson, Jr., performed prior to the acceptance of his said draft, and the aforesaid sum of $460.76 was not subject to any previous order or money advanced by the defendant to J. T. Patterson, Jr., and that the same was placed to his credit and control since the acceptance of said draft.

6th. That said defendant, Douglas, has had placed to his credit and control in the Treasury Department, in Washington, D. C., the sum of $2,274.55, due him for service of W. J. Patterson rendered prior to the acceptance of the aforesaid draft for $325.00, and that the same was not subject to any previous draft or monies advanced by the defendant to the said W. J. Patterson, except a draft for $100.00 and one for $500.00, and that the aforesaid sum of $2,274.55 was placed to the credit and control of the defendant since the acceptance of said draft.

7th. That the amount of the claim which S. P. Graham traded to the plaintiffs on the 25th day of October, 1881, was $98.82 for services rendered by said Graham as deputy marshal to the defendant and sworn to before J. C. Anderson, U. S. commissioner, on the 20th day of October, 1881, and that the same was presented to defendant by the plaintiffs, which he agreed to pay, and of the aforesaid claim $95.62 has been placed to the credit and control of the defendant in the Treasury Department, at Washington, D. C., since the acceptance of said claim by defendant, the remainder of said claim having been allowed by the Government; that the voucher so traded to the plaintiffs was for services rendered prior to said acceptance and before the same was transferred to the plaintiffs; and the further sum of $2,858.76 was placed to the defendant's credit and control in the Treasury Department for services rendered by said Graham, and out of that sum the defendant has received $900.00, leaving $1,958.76 to the credit of the defendant since said acceptance.

8th. The referee finds as a further fact that the aforesaid amounts when added together make a sum total of $620.62.

From the foregoing facts I find the following conclusions of law:

1st. That the amount of money placed to the credit and control of the defendant in the Treasury Department, at Washington, D. C., as found above and which are largely in excess of the plaintiffs' claims, are subject to the payment of the drafts sued on to the full

amount of the same, with interest thereon at 6 per cent. from the 17th day of July, 1885, at which time this action began, till the 7th day of August, 1893, which amount *to* $318.55 added to the principal make a sum total of $939.17, which I find, as a conclusion of law, that the plaintiffs are entitled to judgment against the defendant and for costs of action; all of which, together with the evidence introduced by both parties and the rulings as to the competency of evidence, is respectfully submitted this 7th day of August, 1893.

(Signed) H. BINGHAM, *Referee.*

(Record, page 42.)

Exceptions of Defendant, August Term, 1893.

Defendant excepts to the report of H. Bingham, Esq., made to this term of court, and assigns the following grounds of exceptions:

1st. For that the commissioner erroneously finds (on page 4 of report) that plaintiffs offered "additional" record evidence from the Treasury Department, at Washington, D. C., marked Exhibits "A," "B," and "C," whereas said records were not "additional" evidence offered on the hearing under this reference, but the same had been offered in 1887, and afterwards held by Connor, judge, to be incompetent.

2nd. For that the commissioner erred in admitting and holding as competent said transcripts, "A," "B," and "C," the same having been objected to by defendants as being fragmentory and incomplete transcripts of the accounts of defendant with W. J. Patterson, J. T. Patterson, and S. P. Graham.

3rd. For that the commissioner erred in admitting Exhibit "A A" under objection of defendant for the same reasons assigned in exception 2 against Exhibits "A," "B," and "C."

4th. For that the commissioner, after having reported in his report to February term, 1893, that without these Exhibits "A," "B," and "C" and "A A" there was no evidence to sustain plaintiffs' complaint, no other material evidence having been offered by plaintiffs and admitted, now erroneously finds the large amounts against defendant, as specified in the present report, when said Exhibits "A," "B," and "C" and "A A" do not prove nor tend to prove that defendant has ever received or had placed to his credit and control any money in the Treasury Department, at Washington, D. C., on account of services of W. J. Patterson, J. T. Patterson, or S. P. Graham.

5th. For that the commissioner erred in sustaining plaintiffs' objection to and thereupon excluding the letter of Charles Foster, Secretary of the Treasury (see Exhibits "M" and "N"), offered in evidence by defendant, the said letter being duly certified under the statute both from the Court of Claims and from the Treasury Department of the United States, and offered by defendant to show that there had never been any settlement of his claims and accounts with the United States as marshal for services rendered.

6th. For that the commissioner erred in finding (page 9 of report) that defendant has had placed to his credit in the Treasury of the United States the sum of $460.70 on claims for services of J. T. Patterson, Jr., performed prior to the acceptance of his said draft, and that said sum was not subject to any previous order of said Patterson or money advanced to him by defendant, and that said sum was placed to defendant's credit and control since the acceptance of said draft, when there is no evidence to sustain said findings.

7th. For that the commissioner erred in finding (No. 6, on page 10 of report), without any evidence to sustain him in so finding, that defendant has had placed to his credit and control in the Treasury Department of the United States the sum of $2,274.55 for services of W. J. Patterson performed prior to the acceptance of the draft for $325.00 and not subject to any previous draft or monies advanced to said W. J. Patterson by defendant except $100.00 and $500.00, and that said $2,274.55 was placed to defendant's credit and control since the acceptance of said draft for $325.00 of W. J. Patterson.

8th. For that the commissioner erred in finding (No. 7, page 11 of report), as to the claim of S. P. Graham, that the same was presented to defendant, and that he agreed to pay it, and that of said claim $95.62 has been placed to defendant's credit and control in the Treasury Department of the United States since the "acceptance" of said claim by the defendant, and also (in the commissioner's words) "that said voucher traded to plaintiff was for services rendered prior to said acceptance and before the same was transferred to plaintiffs, and that the further sum of $2,858.76 was placed to the defendant's credit and control in the Treasury Department for services rendered by said Graham, and that out of that sum the defendant has received $900.00, leaving to the credit of the defendant $1,958.76 since said acceptance;" all of which is not only against the weight of evidence, but without any evidence to sustain it.

9th. For that the commissioner erred in giving the plaintiffs the full amount of what is called the Graham claim and interest thereon, while plaintiffs in their complaint only claim two-thirds of the same.

10th. For that, as defendant says, there is no evidence to sustain the findings referred to and stated in his above exceptions 6, 7, 8, and 9, or, if there be any evidence at all, it is very slight and said findings are each against the weight of evidence.

11th. For that the commissioner erred in holding as a conclusion of law that the entire sums he finds and says were placed to defendant's credit and control in Treasury Department of the United States for services rendered by Deputies W. J. Patterson, J. T. Patterson, and S. P. Graham would be applicable to the payment of drafts and accounts of said deputies, when the law provides that the allowance to deputies shall not exceed three-fourths of the amounts allowed the marshal, and in these cases it has been proved that the deputies were to have only one-half of amounts allowed the marshal on the claims.

12th. For that the commissioner erred in finding that any amount had been or could be placed to defendant's credit and control in the United States Treasury Department till a warrant had been drawn for its payment, which warrant would be the best evidence of the fact; and no such warrants were produced by plaintiffs in evidence.

13th. For that the commissioner erred in finding anything due on said drafts, because they were drawn on claims against the United States before said claims were allowed, and are therefore null and void under section 3477 of the Revised Statutes of the United States.

(Signed) D. M. FURCHES,
ROBBINS & LONG,
For Defendant.

(Record, page 44.)

Judgment, November Term, 1893.

This action coming on for hearing before Whitaker, judge, at November term, 1893, of Iredell superior court, upon the report of H. Bingham, Esq., and exceptions of the defendant thereto, when, upon a full consideration of said report and said exceptions by the court, defendant's exceptions 1st, 2nd, 3rd, 4th, 6th, 7th, 9th, and 11th were sustained. Also plaintiffs' 8th exception was sustained, except the following part of said exception: "And also that said voucher traded to plaintiff was for services rendered prior to said acceptance and before the same was transferred," which was withdrawn by defendant. Exception 10 was also withdrawn. Exception 12 was not passed upon by the court, because it had been substantially passed upon by rulings on other exceptions. The 13th exception was overruled. Exception 5 overruled.

When plaintiffs moved for judgment against defendant because of negligence on the part of defendant in not collecting funds due him as marshal for services rendered by plaintiffs' assignors, which motion was refused by the court.

Therefore, on motion of Robbins and Furches, attorneys of defendant, it is considered and adjudged by the court that plaintiffs take nothing by reason of this action, except one penny, and that defendant go without further day, and that plaintiffs recover of defendant their cost of this action, to be taxed by the clerk, except the sum of one hundred (100) dollars allowed to H. Bingham, Esq., for taking and stating the account in this case, which is to be divided, the plaintiffs paying fifty (50) dollars thereof and the defendant paying fifty (50) dollars thereof.

(Signed) SPIER WHITAKER,
Judge Presiding.

(Record, page 44.)

Judgment, May Term, 1894.

This action coming on for hearing before Bynum, judge, at May term, 1894, of Iredell superior court, upon the report of H. Bingham, Esq., and exceptions thereto, and the decision of the supreme court passing upon the judgment of Whitaker, judge, heretofore rendered at November term, 1893, of this court.

The defendant's exceptions 4, 6, 7, 9, and 12, not heretofore passed upon, are overruled, and the opinion of the supreme court overruling exceptions 1, 2, 3, and 11 is hereby adopted.

The court adopts the findings of the referee upon his findings of fact, holding as matter of law the records A, B, and C, "A A," being admitted by the supreme court as competent testimony, was sufficient to sustain the findings of fact by the referee in his findings 5, 6, 7, and 8, when plaintiff moved for judgment against defendant because of his negligence in not collecting said sums due him as marshal for services of *of* plaintiffs' assignors, which the referee finds had been allowed defendant and placed to his credit and control; which motion was allowed by the court; whereupon, upon motion of plaintiffs' counsel, Messrs. Armfield and Turner, it is considered and adjudged by the court that the plaintiffs, Wallace Bros., recover of the defendant, R. M. Douglas, the sum of $961.50, with interest on $620 at six per cent. per annum from May 21, 1894, till paid. It is further considered that the plaintiffs recover of the defendant their costs of this action, to be taxed by the clerk of this court, except the sum of one hundred dollars allowed to H. Bingham, Esq., for taking and stating the account in this case, which is to be divided, the plaintiff paying $50 and the defendant paying $50 thereof as heretofore adjudged.

(Signed) JOHN GRAY BYNUM,
Judge Presiding.

From this judgment the defendant appeals. Notice waived in open court. Appeal bond fixed at $50.00. Said bond duly executed and herewith sent.

(Record, page 45.)

Case for the Defendant on Appeal of the Defendant.

This is a civil action brought by plaintiffs upon the following drafts and acceptances thereof, to wit:

"$325.00. Pay to the order of W. J. Patterson three hundred and twenty-five dollars, value received, and charge the same to the account of—

W. J. PATTERSON,

To R. M. Douglas, U. S. marshal."

With the following acceptance:

"Accepted, payable when I receive funds to the use of W. J. Patterson.

R. M. DOUGLAS,
U. S. Marshal."

Also one other draft and acceptance, in words and figures as follows, to wit:

"$200.00. Pay to myself two hundred dollars, value received, and charge the same to the account of—

"J. T. PATTERSON, JR., *D. M.*

"To R. M. Douglas, U. S. marshal."

"Accepted, payable when I receive funds to the use of J. T. Patterson, Jr.

"R. M. DOUGLAS,
"*U. S. Marshal.*"

Also a claim of $98.82 of S. P. Graham, for services rendered as a deputy marshal of the United States under the said R. M. Douglas, dated October 20, 1881; all of which are assigned to the plaintiffs. The matters involved in this action were referred to H. Bingham, Esq., who took an account and reported the same to August term, 1893, of this court, and the defendant filed exceptions thereto, which were passed upon by Whitaker, judge, and from whose judgment an appeal had been taken to the Supreme Court. The said report was heard upon defendant's exceptions and the judgment of the supreme court in overruling the former judgment by Bynum, judge, at May term, 1894.

Before the hearing and judgment of the court the defendant moved as follows:

"The defendant moves that the action be dismissed for that the complaint and evidence in the case discloses that all the drafts and accounts herein declared on were drawn on claims or an interest in claims against the United States before their allowance, and are therefore null and void under the statutes of the United States.

"The defendant further moves that the action be dismissed because the referee does not find that any sums of money have been paid to the defendant."

These motions were overruled and disallowed by the court, and defendant excepted; whereupon the court proceeded to consider the case on the report and exceptions, and, on motion of plaintiffs' counsel, rendered the judgment set out in the record proper, to which judgment the defendant excepted, and alleges that said judgment shows that no funds had been received by the defendant to the use of J. T. Patterson, Jr., W. J. Patterson, or on the account of S. P. Graham, and that therefore the plaintiffs are not entitled to any judgment on said claims. The defendant also excepts to this judgment on the ground that the plaintiffs cannot maintain this

action and make any recovery against the defendant for the reason that the alleged causes of action are unlawful, for that the drafts and account declared on are based upon and assign an interest in claims against the United States before the allowance of said claims by the Treasury Department of the United States, in violation of section 3477 of the United States Revised Statutes.

From this ruling and judgment of the court the defendant appealed to the Supreme Court. Notice of appeal accepted by plaintiffs. Appeal bond fixed by the court at fifty dollars.

(Signed) D. M. FURCHES,
ROBBINS & LONG,
Attorneys for Defendant.

(Record, page 47.)

Agreement of Parties on Appeal by Defendant from May Term, 1894.

For the purpose of saving the expense of copying a long record it is agreed by the parties, plaintiffs and defendants, that the transcript now on file in the Supreme Court of the evidence and report of H. Bingham, Esq., referee, filed as a part of the transcript in a former appeal in this case, be used by either side in the trial of this appeal to the same extent and for the same purposes as if the same were copied in the transcript of appeal in this case: and it is further agreed by the parties that the transcript from the Treasury office, Washington, D. C., and all the depositions and exhibits on file as evidence be transmitted to the Supreme Court without copying the same, to be used by either party on the trial in the Supreme Court as evidence, to the same extent as if they had been copied in the transcript of appeal.

This the 5th day of October, 1894.

(Signed) ARMFIELD & TURNER,
For Plaintiffs.
D. M. FURCHES,
Att'y for Defendant.

(Record, page 47.)

Undertaking on Appeal, May Term, 1894.

Whereas, at the May term, 1894, of the superior court in and for said county of Iredell, judgment was rendered in the above-entitled action against the defendant, R. M. Douglas, who prayed an appeal therefrom to the Supreme Court: Now, therefore, we, Robert M. Douglas, as principal, and Samuel L. Trogden, as surety, undertake in the sum of fifty dollars that the appellant will pay all costs which may be awarded against him on the appeal.

Witness our hands and seals this 5th day of June, 1894.

(Signed) ROBERT M. DOUGLAS. [SEAL.]
" SAMUEL L. TROGDEN. [SEAL.]

Endorsed: North Carolina, Guilford county.

The execution of the within undertaking was this day duly acknowledged before me by Robert M. Douglas and Samuel L. Trogden, personally well known to me, and the said Samuel L. Trogden, being by me duly sworn, says that he is worth the sum of two hundred dollars over and above his debts and liabilities and property exempt from execution.

Witness my hand and official seal this 5th day of June, 1894.

(Signed) R. G. VAUGHAN. [SEAL.]

(Record, page 48.)

NORTH CAROLINA, }
Iredell County. }

I, J. H. Hill, clerk of the superior court of Iredell county, do hereby certify that the foregoing is a full, true, and complete transcript of the record of said court in the suit wherein Wallace Bros. are plaintiffs and R. M. Douglas is defendant. In testimony whereof I hereunto set my hand and affix the seal of said court this 5th day of October, 1894.

(Signed) J. H. HILL,
Clerk Superior Court. [L. S.]

(Record, page 48.)

N. C. Supreme Court.

WALLACE BROS.
v.
R. M. DOUGLAS, Appellant. } # 290, Iredell County.

Defendant's appeal filed October 9, 1894; submitted on briefs November 13, 1894, by Armfield & Turner, for plaintiffs, and R. M. Douglas, for defendant. Advisari taken. Opinion of the court filed April 2, 1895, as follows:

(Record, page 49.)

MONTGOMERY, *J.*:

This is the fourth time this cause has been before the court. In the report of the first appeal—103 N. C., 19—can be seen the statement of the contention between the parties.

The referee, at the August term, 1893, of the superior court of Iredell county, made an amended report as follows:

1. That the defendant, R. M. Douglas, was marshal of the western district of North Carolina for the years 1878, 1879, 1880, and 1881, and that during said years he had in his employment as deputy marshals J. T. Patterson, Jr., W. J. Patterson, and S. P. Graham.

2nd. That on the 4th day of December, 1879, J. T. Patterson, Jr., drew a draft on defendant in favor of himself for $200.00 (two hundred dollars), and endorsed by him on same day to Blantuo & Dryant, and subsequently purchased by the plaintiffs, who are now

the owners thereof, and that on the — day of ——, 188–, the plaintiffs presented said draft to the defendant for payment, who accepted the same conditionally by writing across the face thereof the following:

"Accepted; payable when I receive funds to the use of J. T. Patterson, Jr.

R. M. DOUGLAS,
U. S. Marshal."

3rd. That on the 16th day of November, 1881, W. J. Patterson drew a draft on defendant for $325.00 (three hundred and twenty-five dollars), payable to himself, and on said day endorsed by him and accepted by the defendant conditionally by writing across the face thereof the following:

"Accepted; payable when I receive funds to the use of W. J. Patterson.

(Signed) R. M. DOUGLAS,
U. S. Marshal."

And that the plaintiffs are now the owners thereof.

4th. That neither of the foregoing drafts have been paid, nor any part thereof.

5th. That the defendant Douglas has had placed to his credit in the Treasury Department of the United States the sum of $460.76 on claims due him for services of J. T. Patterson, Jr., performed prior to the acceptance of his said draft, and the aforesaid sum of $460.76 was not subject to any previous order or money advanced by the defendant to J. T. Patterson, Jr., and that the same was placed to his credit and control since the acceptance of said draft.

6th. That said defendant, Douglas, has had placed to his credit and control in the Treasury Department, in Washington, D. C., the sum of $2,274.55 due him for service of W. J. Patterson rendered prior to the acceptance of the aforesaid draft for $325.00, and that the same was not subject to any previous draft or monies advanced by the defendant to the said W. J. Patterson except a draft for $100.00 and one for $500.00, and that the aforesaid sum of $2,274.55 was placed to the credit and control of the defendant since the acceptance of said draft.

7th. That the amount of the claim which S. P. Graham traded to the plaintiffs on the 25th day of October, 1881, was $98.82 for services rendered by said Graham as deputy marshal to the defendant and sworn to before J. C. Anderson, U. S. commissioner, on the 20th day of October, 1881, and that the same was presented to defendant by the plaintiffs, which he agreed to pay, and of the aforesaid claim $95.62 has been placed to the credit and control of the defendant in the Treasury Department, at Washington, D. C., since the acceptance of said claim by defendant, the remainder of said claim having been allowed by the Government; that the voucher so traded to the plaintiffs was for services rendered prior to said acceptance and before the same was transferred to the plaintiffs, and the further

sum of $2,858.76 was placed to the defendant's credit and control in the Treasury Department for services rendered by said Graham, and out of that sum the defendant has received $900.00, leaving $1,958.76 to the credit of the defendant since said acceptance.

8th. The referee finds, as a further fact, that the aforesaid amounts when added together make a sum total of $620.62.

From the foregoing facts I find the following conclusions of law:

1st. That the amount of money placed to the credit and control of the defendant in the Treasury Department, at Washington, D. C., as found above, and which are largely in excess of the plaintiffs' claims, are subject to the payment of the drafts sued on to the full amount of the same, with interest thereon at 6 per cent. from the 17th day of July, 1885, at which time this action began, till the 7th day of August, 1893, which amount to $318.55; added to the principal make a sum total of $939.17, which I find, as a conclusion of law, that the plaintiffs are entitled to judgment against the defendant and for costs of action; all of which, together with the evidence introduced by both parties and the rulings as to the competency of evidence, is respectfully submitted, this 7th day of August, 1893.

At May term, 1894, when the case was called for hearing, the defendant made the following motions: "That the action be dismissed, for that the complaint and evidence in the case disclose that all the drafts and accounts herein declared on were drawn on claims or an interest in claims against the United States before their allowance, and are therefore null and void under the statutes of the United States. The defendant further moves that the action be dismissed because the referee does not find that any sums of money have been paid to the defendant." The motions were overruled and the defendant excepted. The court then proceeded to consider the case on the report and exceptions. The exceptions were not sustained. The findings of the referee were adopted and confirmed, and the following judgment was rendered: This action coming on for hearing before Bynum, judge, at May term, 1894, of Iredell superior court, upon the report of H. Bingham, Esq., and exceptions thereto, and the decision of the supreme court, passing upon the judgment of Whitaker, judge, heretofore rendered at November term, 1893, of this court—

The defendant's exceptions 4, 6, 7, 9, and 12, not heretofore passed upon, are overruled, and the opinion of the supreme court overruling exceptions 1, 2, 3, and 11 is hereby adopted.

The court adopts the findings of the referee upon his findings of fact, holding as matter of law the records A, B, and C. "A A," being admitted by the supreme court as competent testimony, was sufficient to sustain the findings of fact by the referee in his findings 5, 6, 7, and 8, when plaintiff- moved for judgment against defendant because of his negligence in not collecting said sums due him as marshal for services of plaintiffs' assignors, which the referee finds had been allowed defendant and placed to his credit and control; which motion was allowed by the court; whereupon, upon motion of plaintiffs' counsel, Messrs. Armfield and Turner, it is considered and adjudged by the court that the plaintiffs, Wallace Bros.,

recover of the defendant, R. M. Douglas, the sum of $961.50, with interest on $620 at six per cent. per annum from May 21, 1894, till paid. It is further considered that the plaintiffs recover of the defendant their costs of this action, to be taxed by the clerk of this court, except the sum of one hundred dollars allowed to H. Bingham, Esq., for taking and stating the account in this case, which is to be divided, the plaintiff- paying $50 and the defendant paying $50 thereof as heretofore adjudged.

To the judgment the defendant excepted for the reason, as he alleges, that it shows that no funds had been received by the defendant to the use of J. T. Patterson, Jr., W. J. Patterson, or on the account of S. P. Graham, and that therefore the plaintiffs are not entitled to any judgment on the claim. He also excepts to the judgment on the ground "that plaintiffs cannot maintain the action and make any recovery against defendant, for the reason that the alleged causes of action are unlawful for that the drafts and account declared on are based upon and assign an interest in claims against the United States before the allowance of the claim by the Treasury Department of the United States, in violation of section 3477, U. S. Revised Statutes."

His honor properly refused to dismiss the action for the first cause assigned therefor. The matter of the compensation of the seputies marshal of the defendant is between them and the marshal and not between them and the Government, and therefore the assignment of their claims for compensation against the marshal is not in violation of section 3477 of the Revised Statutes of the United States. Wallace *vs.* Douglas, 103 N. C., 19.

The second cause assigned for the dismissal of the action was properly refused. It was not necessary for the defendant to have received the manual possession of the money which had been placed to his credit and under his control in the Treasury Department, at Washington, for the services of his deputies to fix him with liability on the acceptances which he had made for them. For whatever reason the defendant had failed or refused to make his settlement with the Government his deputies had no concern. Their compensation, though due to them by the defendant, was audited and passed upon by the proper Government officials and put to the credit and under the control of the defendant, and upon that having been done there was a receiving by the defendant of the funds. So far as he and his deputies were concerned, the defendant became liable to them, and, as a consequence, to their assignees, the plaintiffs.

The exceptions to the judgment cover the same grounds as do the motions to dismiss, and they are not sustained here.

There is no error in the judgment, even if it be conceded that the court in rendering it gave a wrong reason therefor. No error.

Furches, J., having been of counsel, did not sit on the hearing of this case.

(Record, page 54.)

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of Iredell county; upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by the Honorable W. A. Montgomery, justice, be certified to the said superior court to the intent that the judgment be affirmed; and it is considered and adjudged further that the defendant, R. M. Douglas, and surety Samuel L. Trogden do pay the costs of the appeal in this court incurred, to wit, the sum of eleven dollars and forty cents, and let execution issue therefor.

(Record, page 54.)

North Carolina Supreme Court.

I, Thomas S. Kenan, clerk of the supreme court of the State of North Carolina, do hereby certify the foregoing to be a full, true, and correct transcript of an action entitled Wallace Bros. against Robert M. Douglas, as appears of record in this court.

In witness whereof I have hereto set my hand and affixed the seal of said court, at office, in Raleigh, this the 1st day of May, 1895.

[Seal of Sup. Ct. of the State of North Carolina.]

THO. S. KENAN, *S. C. C.*

(Record, page 54.)

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of Iredell county; upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by the Honorable W. A. Montgomery, justice, be certified to the said superior court to the intent that the judgment be affirmed; and it is considered and adjudged further that the defendant, R. M. Douglas, and surety Samuel L. Trogden do pay the costs of the appeal in this court incurred, to wit, the sum of eleven dollars and forty cents, and let execution issue therefor.

(Record, page 54.)

North Carolina Supreme Court.

I, Thomas S. Kenan, clerk of the supreme court of the State of North Carolina, do hereby certify the foregoing to be a full, true, and correct transcript of an action entitled Wallace Bros. against Robert M. Douglas, as appears of record in this court.

In witness whereof I have hereto set my hand and affixed the seal of said court, at office, in Raleigh, this the 1st day of May, 1895.

[Seal of Sup. Ct. of the State of North Carolina.]

THO. S. KENAN, *S. C. C.*

Office Supreme Court U. S.
FILED.
JAN 27 1896
JAMES H. McKENNEY,
CLERK.

NUMBER 611.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

ROBERT M. DOUGLAS, PLAINTIFF IN ERROR, *vs.* ISAAC WALLACE AND OTHERS, DEFENDANTS IN ERROR.	Argument of Counsel of Defendants in Error Upon the Motion to Dismiss the Writ of Error Under Rule 6.

FROM NORTH CAROLINA.

NUMBER 611.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

ROBERT M. DOUGLAS, PLAINTIFF IN ERROR, *vs.* ISAAC WALLACE AND OTHERS, DEFENDANTS IN ERROR.	Argument of Counsel of Defendants in Error Upon the Motion to Dismiss the Writ of Error Under Rule 6.

This is a civil action instituted in the Superior Court of Iredell County, North Carolina, by Wallace Brothers to recover of Robert M. Douglas, the amount of certain drafts drawn upon said Douglas by certain persons and accepted by writing across said drafts, "Accepted; payable when I receive funds to the use of W. J. Patterson. (Signed) R. M. Douglas, U. S. Marshal." The defendant at said time was U. S. Marshal for the Western District of North Carolina, and the persons drawing said drafts were Deputy U. S. Marshals under him. Judgment was rendered in the Superior Court of Iredell County, North Carolina, in favor of said Wallace Brothers and against R. M. Douglas for the full amount of said drafts after said action had been pending about seven years, and the Supreme Court of

North Carolina, at the February Term, 1895, thereof, affirmed the said judgment. The case had previously been before said Supreme Court.

See 103 N. C., page 19; 105 N. C., page 43.

It is conceded that the jurisdiction of the Supreme Court of the United States to review the Supreme Court of any State is confined

1st. Where is drawn in question, the validity of a treaty or statute of, or authority exercised under, the United States, and the decision is against their validity.

2nd. Where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their repugnance to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity.

3rd. Where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity, specially set up or claimed by either party under such Constitution, treaty, statute, commission or authority.

Stiens vs. Franklin Co., 14 Wallace, 15-23.

In the case at bar the only pretense that there is any Federal question involved is the alleged infringement of Sec. 3477, of the Revised Statutes of the United States, prohibiting the assignment of a claim against the United

States. The Supreme Court of North Carolina properly decided that this Section 3477, R.S., did not apply to this case.

Wallace vs. Douglas, 116 N. C.; S. E. Reporter, Vol. 21, page 387.

The following language from the Supreme Court of North Carolina upon a former appeal bears upon this question:

"No statutory provision of the United States brought to our attention, or of which we have any knowledge, gives or secures to Deputy Marshals any claim against the government for, or any interest in, fees or compensation earned by them as such Deputies. Neither fees nor compensation are prescribed by statute for them, nor are they recognized nor treated as entitled to the same, as of legal right, or as creditors of the government. The fees they earn are, certainly, ordinarily for, and belong to, the Marshal. In the nature of their employment and duties they act in his name and place, and the fees they earn are due to him and are charged in his name. They are little more than his agents or servants, invested with some measure of his authority conferred by law, and they are recognized by the law only to determine their rights and liabilities, and the rights and liabilities and duties of third parties arising out of what they do or fail to do as Deputies. Their claims for compensation are against the Marshal, according as he and they agree upon the measure of it and

how and when it shall become due and payable. No doubt he may allow to them and they may agree to accept the fees they earn in his name and for him, or a part of them, as compensation, to be paid to them when such fees shall be allowed to him by the proper auditing authorities of the government, and he shall be paid the same under existing laws, or he may pay them fixed salaries. The matter of their compensation is between them and the Marshal and not between them and the government. The statute (R. S. U. S., Secs. 780, 784, 829, 830, 833, 834, 841, 844, 846) prescribe the fees and compensation the Marshal may have; the maximum he may take; how he shall account with the government; that he shall give bond and be liable for breeches of conditions thereof; but no fees or compensation are prescribed for his Deputies, nor is their liability prescribed. The Marshal is liable for their misfeasance or non-feasance within the sphere of his office. Sec. 833 requires the Marshal, in making his semi-annual report to the Attorney General of the fees and emoluments of his office to 'state separately therein the fees or emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his Deputies, naming him, and the proportion of such fees and emoluments which, by the terms of his service, each Deputy is to receive.' And there is a provision in Section 841 cited, restricting allowances on account of Deputies."

The purpose of these requirements and provisions is not to give Deputies any claim against the government, but to facilitate the adjustment and settlement of the accounts of the Marshal and to prevent him from recovering more than the maximum compensation allowed by law. There are numerous other statutory provisions, all pointing more or less directly, to the right of the Marshal to have claims against the government for fees and emoluments earned by him for services rendered by himself and his Deputies in a variety of ways, but none that give Deputies such right.

The Deputies of the defendant named in the pleadings, as to their claims in question did not, therefore, have any claim against the United States for fees and emoluments, or otherwise, as implied by the 15th Exception of defendant, but their claims were against him, for such part of the fees earned by them, respectively, as he agreed with each he should have, to be paid by him when the government should allow and pay his claim against it. The Deputies each assigned his claim, or part of it, whether by draft or otherwise, against the defendant and not his claim against the government and hence, the statute (Revised Statutes, U. S., §3477) making absolutely void "all transfers and assignments made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional," etc.,

unless made in the way prescribed, has no pertinency or application here and does not effect the rights of the plaintiffs. And for the like reason. Frist vs. Child, 21 Wall, 441; U. S. vs. Gillis, 95 U. S., 407; Spofford vs. Kirk, 97 U. S., 864, cited and relied upon by defendant, are not applicable.

Wallace vs. Douglas, 103 N. C., page 23.

As bearing upon the same question, we quote from the opinion of the Supreme Court of North Carolina in another case:

"The action rests upon contract and is entirely personal to the defendant, as much so as if he were not an officer of the United States when he made it. It is to enforce this individual obligation and to compel payment to the plaintiff of his share of the moneys * * *"

Setzer vs. Douglas, 91 N. C., page 429;
Citing Gold Wash. & Water Co. vs. Keys, 96 U. S. Report, 199;
Cohens vs. Virginia, 6 Wheat., 379;
Osborne vs. U. S. Bank, 9 Wheat., 822;
Albright vs. Teas, 106 U. S. Report, 430.

The drafts in question were drawn upon R. M. Douglas individually. The acceptance was general and not limited to any particular funds. They were "Accepted; payable when I receive funds to the use of W. J. Patterson."——

In Murdoch vs. City of Memphis, 20 Wall, 590, the Court says:

"It often has occurred, however, and will occur again, that there are other points in the case than those of Fed-

eral cognizance, on which the judgment of the Court may stand; these points being of themselves sufficient to control the case. Or it may be there are other issues in the case. * * * * Why should a judgment be reversed for error in deciding the Federal question, if the same judgment must be rendered on other points in the case?"

This Court cannot know the evidence before the Courts of North Carolina bearing upon the question of whether or not the condition upon which the drafts were accepted had been performed, or what funds belonging to the parties drawing the drafts had come into the possession of the defendant.

Finally: Ifi t should be conceded that the United States is indebted to Deputy Marshals for the fees earned by them instead of to the Marshal. Still an assignment of such claim would not be within the prohibition of the Section 3477, R. S., for " 'A claim' against the United States within the prohibition of assignment *is something in the nature of a demand for damages, arising out of some alleged act or omission of* the government, not yet provided for or acknowledged by law. *When* the *demand is admitted, authorized or provided for by law, it is not a mere claim, but a debt.*"

Dowell vs. Cardwell, 4th Saw., 217.

The purpose and object of Sec. 3477, R. S., is explained in Goodman vs. Niblack, 12 Otto., 556, and other cases " to be solely for the protection of the government, and not

the parties to the assignment," and it would be a pervasion of law and justice to allow any man to shelter himself behind it to evade the consequences of his own act in accepting the drafts sued on.

Respectfully submitted,

ARMFIELD & TURNER,

Attorneys for Defendants in Error.

Office Supreme Court, U. S.
FILED.
JAN 27 1896
JAMES H. McKENNEY,
CLERK.

BRIEF OF PLAINTIFF IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1895.

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ROBERT M. DOUGLAS, PLAINTIFF IN ERROR,

vs.

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Number 611.

In the Supreme Court of the United States,

OCTOBER TERM, 1895.

ROBERT M. DOUGLAS, PLAINTIFF IN ERROR,
vs.
ISAAC WALLACE AND OTHERS, DEFENDANTS IN ERROR,

Argument of Counsel for Plaintiff in Error upon the Motion to Dismiss the Writ of Error under Rule 6.

This is a motion under rule 6, "(1) to dismiss the writ of error for want of jurisdiction; (2) to affirm the judgment of the Supreme Court of North Carolina because it is manifest hat the writ of error was sued out for delay merely, and the question upon which the jurisdiction depends is so frivolous as not to need further argument!"

That the Court has jurisdiction seems so clear as not to admit of question.

The Plaintiff in error, (being the Defendant in the State Courts) claims an immunity from suit under Section 3477 of the Revised Statutes U. S., which makes *absolutely null and void* all transfers and assignments made of any claim upon the United States, or any part or share thereof, or interest therein, whether absolute or conditional, and all orders or other authorities for receiving payment of any such claim or any part or share thereof, made before the allowance of the claim and the issuing of a warrant for its payment. The decision of the Supreme Court of North Carolina, the court of last resort in that State, was against the immunity from suit so claimed by

the Plaintiff in error; and such a decision was essential to the judgment therein rendered. If the State Court had decided against the validity of the transfers, no judgment whatever could have been rendered against the Plaintiff in error.

The record shows that the Federal question was raised by the Plaintiff in error in both the Superior and Supreme Courts of North Carolina; and was directly decided by the latter court against the statute. It also shows that there were only three causes of action, two of them being drafts drawn by Deputy Marshals *as* Deputy Marshals on R. M. Douglas *as* U. S. Marshal, and accepted by Ro. M. Douglas *as* U. S. Marshal "payable when he received funds to the use of the drawers."

There was no suggestion of any personal liability.

The third cause of action was the original account of S. P. Graham, for services as Deputy Marshal, which he traded to the Defendants in error. This was clearly a claim against the United States, of which a part was due to the Marshal and part to the Deputy Graham.

It is admitted that none of the accounts which were transferred, or on which these drafts were drawn, had been allowed at that time; and that no warrant has ever been issued for the payment thereof.

Deputy Marshals are officers of the United States; and are so recognized by the Statutes and the Courts. Their appointment is authorized by Section 780, R. S. U. S.; and by the same section they are made removable from office by the Judges of the Courts; they are required to take an oath by Section 782; they are given the same powers as Sheriffs by Section 788; they are empowered to execute process after the death or removal of the Marshal, by Sections 789 and 790; they are required to verify their accounts, and their claim to a portion of the fees earned by them is recognized by Section 833; their pro-

portion of fees is limited by Section 841. The Deputy therefore has an interest in the Marshal's claim for fees earned by that Deputy; and any order given by the Deputy upon the Marshal is *pro tanto* a transfer or assignment of that interest.

The assignment of errors is as follows:

"1st. That the Court erred in affirming the judgment of the Superior Court of Iredell county, refusing the motion of the defendant "that the action be dismissed for that the complaint and evidence in the case disclose that all the drafts and accounts herein declared on were drawn on claims or an interest in claims against the United States before their allowance. and which are therefore null and void under the Statutes of the United States."

"2nd. That the Court erred in affirming the judgment of said Superior Court of Iredell county, adjudging that the Plaintiffs, Wallace Bros., recover of the Defendant the sum of $961.50, inasmuch as the alleged causes of action, as set out in the complaint, were unlawful, for that the drafts and accounts declared on are based upon an assignment of an interest in claims against the United States before the allowance of said claims, in violation of section 3477 of the Revised Statutes of the United States.

3rd. That the Court erred in affirming the judgment of the Superior Court of Iredell county, adjudging the Defendant Douglas, liable to the Plaintiffs for sums of money alleged to have been placed to his credit and control in the Treasury Department, when the public statutes of the U. S., of which the courts of North Carolina take judicial cognizance, do not permit any funds to be so placed in the Treasury Department to the credit and control of a claimant so as to be by him withdrawn, but forbid any funds to be withdrawn from the treasury except upon the warrant of the Secretary; and, further, for that there was no allegation in the complaint or finding .

by the referee or the Court that there was any appropriation available for the payment of such claims at the times they are alleged to have been placed to the credit of the defendant or at any time thereafter."

They clearly involve a construction of the statutes of the United States; and as the decision of the State Court was adverse, this Court has jurisdiction.

It is manifest that the writ of error was *not* "taken for delay only," because if successful it will completely exonerate the Plaintiff in error from any further liability.

The question is not frivolous, because it constitutes a complete plea in bar; involves the construction of important Federal Statutes; and vitally affects the rights and duties of a large class of public officers. If, as laid down in the judgment of the Supreme Court of North Carolina; "For whatever reason the defendant had failed or refused to make his settlement with the Government his deputies had no concern," be correct, then any deputy or his assignee, can recover from the Marshal before payment of his claims, and even before any appropriation therefor. The appropiation acts are public statutes; and this Court therefore knows that for the years 1877-8 and 9, and for various years before and since, there were large deficiencies in the appropriations. Congress refused to make any appropriation whatever for the compensation of Marshals for the fiscal year 1880 until long after its expiration. During that time the accounts of Marshals for fees earned were regularly passed and placed to their credit in the Treasury Department subject to an appropriation. If their deputies could have recovered their portion of the fees before payment by the Government, the Marshals could have been forced out of office and practically ruined. This Court judicially knows that no monies can be placed to the credit *and control* of the Marshal in the Treasury Department. No matter what

amount is to his credit, he cannot draw upon any part of it. If the Secretary for any reason refuses to issue his warrant, the claimant is forced into the Court of Claims.

At this stage of the case it does not seem necessary to show more than jurisdiction and a *bona fide* controversy; and a few decisions of this Court will suffice for this purpose.

This section (709 R. S. U. S.) includes all cases involving rights protected by the Federal Constitution, laws and treaties, however created.—*New Orleans vs. De Armas, 9 Pet. 224*; and when a Federal question is clearly raised there is jurisdiction, however frivolous the objection. —*Hall vs. Jordan, 15 Wall 393*. A decision that a Consul-General is not exempt from a suit in a State court may be reviewed.—*Davis vs. Packard, 6 Pet. 41*. So also a decision against exempting Federal securities from taxation.—*Banks vs. Mayor, 7 Wall, 16*. So also a decision against the right of a bankrupt to have a suit staid.—*Hill vs. Harding, 107 U. S., 631;* and a denial of a right under a sale by order of the District Court in bankruptcy.—*Ins. Co. vs. Murphy, 111 U. S., 738* and *Railroad vs. Delamore 114 U. S., 501*.

The following decisions construe Sec, 3477. This section "embraces every claim against the United States, however arrising, of whatever nature it may be, and wherever and whenever presented. * * * It strikes down and denies any effect to powers of attorney, orders, transfers and assignments which before were good in equity, and which a debtor was bound to regard when brought to his notice."—*U. S. vs. Gillis, 95 U. S., 407-413*, "It would seem to be impossible to use language more comprehensive than this. It embraces alike legal and equitable assignments. It includes powers of attorney, orders, and other authorities for receiving payment of any such claim, or any part or share thereof. It

strikes at every derivative interest, in whatever form acquired, and incapacitates every claimant upon the Government from creating an interest in the claim in any other than himself."—*Spofford vs. Kirk, 97 U. S., 484-488,* approving U. S. vs. Gillis, and holding that an accepted order in the hands of a holder in good faith, and for value was void. In this case neither of the parties were or had been public officers; the United States had paid the claim, and had no interest whatsoever in the suit, it being between private parties.

A transfer of an approved account or voucher of one of the Government departments was held void.—*16 A. G. Opp, 191,*

A voluntary transfer, by way of mortgage, finally completed and made absolute by a judicial sale, is void.—*St. Paul R. R. Co. vs. U. S., 112 U. S., 733-736.*

The concluding sentence of the brief of Defendants in error says: "it would be a perversion of law and justice to allow any man to shelter himself behind it [Sec. 3477] to evade the consequences of his own act in accepting the drafts sued on." And yet this was done in Spofford vs. Kirk, supra.

However the Plaintiff in error herein does *not* seek to evade the just consequences of his action. The condition of his acceptance has never been fulfilled; as it is admitted that the claims have never been paid to him.

This is a singular case. It is said that one cannot sue for a horse and recover a cow; but the Defendants in error have sued in contract and recovered in tort without any amendment of the pleadings. They sued for money had and received; and recovered damages for the *unalleged* negligence of the Marshal in *not collecting* the money. This case was begun in 1885 and was four times before the Supreme Court of North Carolina. There was no allegation of negligence in the complaint, and no

suggestion of negligence was ever made until the testimony was finally closed, and the Referee's *fifth* report was before the Court. The motion for judgment on account of negligence was first made in the Superior Court before Judge Whitaker at Nov. term, 1893, and was *refused*. It was renewed before Judge Bynum at May term, 1894, and was then granted. This latter judgment was affirmed by the Supreme Court, which is practically in conflict with the decision in Setzer vs. Douglas, 91 N. C., 429, quoted on page 6 of Defendant's brief. This quotation is extremely fragmentary, ending in an unfinished sentence. If this sentence were finished it would read as follows: "It is to enforce this individual obligation and to compel payment to the plaintiff of his share of the moneys when *and not before* they are *received* by the Defendant and are *at his absolute disposal*," 91 N. C., 426-429.

It seems hard for the same Court to refuse to remove a case into the U. S. Circuit Court on the ground that no recovery was sought or possible until the moneys were received by the Defendant and were at his absolute disposal; and then in a similar case to hold him responsible for his assumed negligence in not collecting said moneys,

The Plaintiff in error is fully aware of the comment likely to arise from none of his counsel signing this brief. The printed record shows that his leading counsel, Judge Furches, is now on the Supreme Court of North Carolina. Two others have accepted high official positions; while his only remaining counsel, Mr. Long, is now general assignee of the Defendants in error, who are insolvent.

In this condition he was unexpectedly called on to resist this motion.

Respectfully submitted.

RO. M. DOUGLAS,
Plaintiff in error.